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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/058,052
Filing Date: January 29, 2002
Appellant(s): WILCOCK ET AL.

Allan M. Lowe
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/06/2007 appealing from the Office action mailed 11/06/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application S. No. 10355262, which is a continuation of the instant case, is also being appealed.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5987142	**Courneau et al.**	**11-1999**
5889843	**Singer et al.**	**03-1999**
66647119	**Slezak, Mark R.**	**11-2003**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9, 12-19, 21-28, 30, 32, 34, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Courneau et al. (U.S. 5,987,142, hereinafter referred to as Courneau).

As to claim 1, Courneau shows:

An audio user-interfacing method in which items are represented in an audio field (e.g., "vicinity of the user") by corresponding synthesized sound sources from where sounds related to the items appear to emanate (e.g., "localization of a specified sound source") (column 1, lines 18-21);

the method including while the user is able to hear (e.g., not prevented from hearing) real-world sounds from an environment where the user is located (e.g., "threats, warnings") (column 3, lines 35-41)

selectively applying, under user control, a distinctive presentation effect to the item-related sounds emanating from a group of at least one synthesised sound source (e.g. "personalization", column 3, lines 35-41) whereby to assist the user in distinguishing the sounds emanating from the at least one sound source from said real-world sounds (column 3, lines 24-28) (e.g., any one sound can be distinguished from another, including real-world sounds from synthethized ones).

As to claim 2, Courneau shows:

Wherein the said group of at least one sound source (e.g., "stereophonic headphone") is associated with an audio-field reference relative to which the at least one sound source is positioned (e.g., "perceived by the listener as if they came from a particular point of space") (column 2, lines 16-27),

the audio-field reference being offset relative to a presentation reference determined by a mounting configuration of audio output devices used to synthesise said at least one sound source such as to world stabilise the audio-field reference as the user moves (e.g., "as if it is actually coming from behind") (column 2, lines 16-27);

at least one sound source representing a corresponding augmented reality service that has an associated real-world location (e.g., " pilot of aircraft hears the voice of his copilot") (column 2, lines 16-27), and

the at least one sound source being positioned relative to the audio field reference such that for a user located in a notional reference position, the at least one sound source lies in the same direction as the associated real-world location (e.g., " may be the actual position") (column 2, lines 16-27).

As to claim 3, Courneau shows:

Wherein said distinctive presentation is a sound effect (column 4, lines 64-67, e.g., "convolution filers").

As to claims 4, 15, 24, Courneau shows:

Wherein said sound effect is at least one of:

volume modulation; pitch modulation; frequency shifting; distortion echo; added noise; added distinction sounds (column 5, lines 41-46).

As to claim 5, Courneau shows:

Wherein the said group of at least one sound source (e.g., "steroponic headphone") is associated with an audio-field reference relative to which the sound sources of the at least one sound source is positioned and moving (e.g., "perceived by the listener as if they came from a particular point of space") (column 2, lines 16-27),

the audio-field reference being movable relative to a presentation reference determined by a mounting configuration of audio output devices used to synthesise said sound sources (column 3, lines 8-15) such as to impart a particular stabilisation to the audio-field reference as the user moves, this stabilisation giving said distinctive presentation to the least one sound source (e.g., "as if it is actually coming from behind") (column 2, lines 16-27).

As to claims 6, 17, 26, Courneau shows:

Wherein the audio-field reference is head stabilized (column 3, lines 15-22).

As to claims 7, 18, 27, Courneau shows:

Wherein the audio-field reference has an underlying stabilization, and further comprising periodically updating the underlying stabilization (column 4, lines 1-6), the audio-field reference between

such updating having a stabilisation inherent to the presentation reference (e.g., "may be the actual position of the sound source") (column 2, lines 16-27).

As to claim 8, Courneau shows:

Wherein the at least one sound source represents an augmented reality service that has an associated real-world location (e.g., " pilot of aircraft hears the voice of his copilot"), the at least one sound source being positioned relative to the audio field reference such that for a user located in a notional reference position, the sound source lies in the same direction as the associated real-world location (e.g., " may be the actual position") (column 2, lines 16-27).

As to claim 9, Courneau shows:

Wherein there are plural synthesized sound sources, each sound source being associated with one of multiple audio-field references relative to which the associated sound sources are positioned (e.g., "spatialize N2 distinct sources"), further comprising moving the audio-field references being independently movable relative to a presentation reference determined by a mounting configuration of audio output devices used to synthesise said sound sources (e.g. "point from which the sound [...] should seem to come from") (e.g., column 3, lines 15-31),

with movement of a said audio-field reference relative to the presentation reference (e.g., "spatial [...] operation") resulting in corresponding movement of the associated sound sources relative to the presentation reference (e.g., "loudspeaker to be placed at any point") (column 5, lines 7-16);

the user applying a selected one of the distinctive presentation effect to a group of sound sources associated with an audio-field reference (e.g. "personalization", column 3, lines 24-28) by choosing all the sound sources of that group as a whole (column 3, lines 13-15).

As to claim 12, Courneau shows:

Apparatus for providing an audio user interface in which items are represented in an audio field by corresponding synthesized sound sources from where sounds related to the items appear to emanate (e.g., "localization of a specified sound source") (column 1, lines 18-21), the apparatus comprising:

rendering-position determining means for determining, for each said sound source, an associated rendering position at which the sound source is to be synthesized to sound in the audio field (e.g., "spatial coordinates of the point from which the sound given [...] should seem to come from") (figure 1, element 13, column 3, lines 13-23);

rendering means, including audio output devices, for generating an audio field in which said sound sources are synthesized at their associated rendering positions (e.g., "spatial coordinates of the point from which the sound given [...] should seem to come from") (figure 1, element 13, column 3, lines 13-23),

the audio output devices being such as to permit (e.g., not prevent) the user also to hear real-world sounds from an environment where the user is located (e.g., "threats, warnings") (column 3, lines 35-45); and

distinctive-presentation means for selectively applying, under user control, a distinctive presentation effect to the item-related sounds emanating from a group of at least one synthesised sound source (e.g. "personalization") whereby to assist the user in distinguishing (column 3, lines 24-28) the item-related sounds from said real-world sounds (e.g., any one sound can be distinguished from another, including real-world sounds from synthethized ones).

As to claim 13, 22, Courneau shows:

Wherein the rendering-position determining means comprises:

means for setting the location of the at least one sound source relative to an audio-field reference (e.g., "as if it is actually coming from behind") (column 2, lines 16-27);

means for controlling an offset between the audio field reference and a presentation reference (e.g., sources are spatialized), the presentation reference being determined by a mounting configuration of the audio output devices (e.g., head detector) (column 3, lines 8-15); and

means for deriving the rendering position of the at least one sound source based on its location relative to the audio-field reference and said offset (column 3, lines 15-21);

the at least one sound source being arranged to provide sounds for a corresponding augmented reality service that has an associated real-world location (e.g., " pilot of aircraft hears the voice of his copilot") (column 2, lines 16-27),

the rendering-position determining means being operative to world-stabilise the audio field reference (column 3, lines 15-21) and to position the at least one sound source relative to the audio field reference such that for a user located in a notional reference position, the sound source lies in the same direction as the corresponding said real-world location (column 2, lines 20-27).

As to claim 14, 23, Courneau shows:

Wherein said distinctive presentation applied by the distinctive-presentation means is a sound effect (column 3, lines 1-7).

As to claim 16, 25, Courneau shows:

Wherein the rendering-position determining means comprises:

means for setting the location of the at least one group sound source relative to an audio-field reference (e.g., "as if it is actually coming from behind") (column 2, lines 16-27);

means for controlling an offset between the audio field reference and a presentation reference(e.g., sources are spatialized), the presentation reference being determined by a mounting configuration of the audio output devices (e.g., head detector) (column 3, lines 8-15); and

means for deriving the rendering position of the at least one sound source based on its location relative to the audio-field reference and said offset (column 3, lines 15-21);

the rendering-position determining means incorporating said distinctive-presentation means and being operative to impart a particular stabilisation to the audio-field reference as the user moves, this stabilisation giving said distinctive presentation to the at least one sound source (column 3, lines 13-23).

As to claim 19, 28, Courneau shows:

Wherein the at least one sound source is arranged to provide sounds for a corresponding augmented reality service that has an associated real-world location (e.g., " pilot of aircraft hears the voice of his copilot") (column 2, lines 16-27), the rendering-position determining means being operative to world-stabilise the audio field reference and to position the at least one sound source relative to the audio field reference such that for a user located in a notional reference position, the at least one sound source lies in the same direction as the corresponding said real-world location (e.g., " may be the actual position") (column 2, lines 16-27).

As to claim 21, Courneau shows:

Apparatus for providing an audio user interface in which items are represented in an audio field by corresponding synthesized sound sources from where sounds related to the items appear to emanate (e.g., "localization of a specified sound source") (column 1, lines 18-21), the apparatus comprising:

a rendering-position determining arrangement operative to determine, for each said sound source, an associated rendering position at which the sound source is to be synthesized to sound in the audio field (e.g., "spatial coordinates of the point from which the sound given [...] should seem to come from") (figure 1, element 13, column 3, lines 13-23);

a rendering subsystem, including audio output devices, arranged to generate an audio field in which said sound sources are synthesized at their associated rendering positions (e.g., "spatial coordinates of the point from which the sound given [...] should seem to come from") (figure 1, element 13, column 3, lines 13-23),

the audio output devices being such as to permit (e.g., not prevent) the user also to hear real-world sounds from an environment where the user is located (e.g., "threats, warnings") (column 3, lines 35-45); and

a distinctive-presentation arrangement operative to selectively apply, under user control, a distinctive presentation effect to the item-related sounds emanating from a group of at least one synthesised sound source (e.g., "personalization") whereby to assist the user in distinguishing the

sounds from the at least one synthesized sound source (e.g., "number of sound sources that can be distinguished", column 3, lines 23-30) from said real-world sounds (e.g., "threats, warnings") (column 3, lines 35-45).

As to claim 30, Courneau shows:

A method according to claim 1, wherein the user hears real-world sounds while the applying step is being performed (column 3, lines 40-46).

As to claims 32, 34, 35, Courneau shows:

A method according to claim 1, wherein the item related sounds are applied to loudspeakers (column 5, lines 13-23).

Claims 10, 20, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Courneau in view of Singer et al (U.S. 5,889,843, hereinafter referred to as Singer).

As to claims 10, 20, 29:

Courneau shows an apparatus and means substantially as claimed, as specified above.

Courneau fails to specifically show: Wherein there are plural sound sources, at least some of the said items represented by the sound sources are audio labels for services, the apparatus including a selection arrangement for enabling a user to select a service by selecting the corresponding audio-label sound source.

In the same field of invention, Singer teaches: a method and system for audio communication using input sensers. Singer further teaches: Wherein at least some of the said items represented by the sound sources are audio labels (e.g., "auditory space") for services, the apparatus including a selection arrangement for enabling a user to select a service (e.g., "perceivable auditory environment") by selecting the corresponding audio-label sound source (e.g., "based upon [...] auditory space").

Thus, it would have been obvious to one of ordinary skill in the art, having the teachings of Courneau and Singer at the time that the invention was made, to have combined the at least some of the said items represented by the sound sources being audio labels for services, the apparatus and means including a selection arrangement for enabling a user to select a service by selecting the corresponding audio-label sound source of Singer with the apparatus and means as taught by Courneau.

(10) Response to Argument

Appellant argues:

1) Courneau et al. is primarily concerned with providing synthesized sounds to the headphones of persons in the very noisy environment of a fighter aircraft; col. 1, lines 8-12; col. 2, lines 2 and 3. The environment is so noisy that the pilot of the aircraft cannot hear any real-world sounds (page 10, paragraph starting with "Courneau et al. is [...]").

2) Coumeau et al indicates management of resources device 12 of spatialization module 1 manages sources to be spatialized. Hence, the threats and warnings referred to in column 3, lines 35-41 are supplied to the user as sounds heard through stereophonic headphones, not as real-world sounds (page 11, penultimate paragraph).

3) It is wrong is to construe Coumeau et al. at column 3, lines 35-41 as selectively applying, under user control, a distinctive presentation of the effect to item-related sounds emanating from a group of at least one synthesized sound source. In this passage, Courneau et al. refers to "personalization" in connection with the hearing characteristics of the ears of the subject who is wearing the headphones. Hence, "personalization" has nothing to do with item-related sounds, no less applying a distinctive presentation effect to item-related sounds emanating from a synthesized sound source (page 11, last paragraph).

4) Coumeau et al. column 4, lines 64-67 indicates convolution filters are "personalized" convolution filters prepared on the basis of measurements using the method described in connection with Figure 4. As discussed supra, Figure 4 is concerned with obtaining data about the hearing characteristics

of the ears of the subject. Thus, the convolution filters referred to in the office action have nothing to do with sound effects that are applied to item-related sounds emanating from a synthesized sound source, as recited in claim 3 (page 12, paragraph starting with "Page 3 of [...]").

5) Column 5, lines 41-45 of Courneau et al has nothing to do with sound effects, no less any types of sound effect, as recited in claims 4, 15, 24. Instead, this portion of Courneau et al indicates the transfer of functions that represent the hearing characteristics of the ears of the subject who is to wear the headphones can include either pairs of frequency responses or pairs of pulse responses (page 12, paragraph starting with "Page 4 of [...]").

6) There is nothing in Coumeau et al to indicate the threats and warnings are real-world sounds (page 13, lines 6-7).

7) There is nothing in Coumeau et al to indicate the user of the apparatus disclosed therein can hear any real-world sounds (page 14, paragraph starting with "The comment [...]").

8) The specification indicates the rendering-position determining means includes (1) subsystem 13 comprising memory 14 that stores the identity and locations of the sound sources, (2) real-world location processing block 21 that is responsive to an Input 23 indicative of user location and the identities and locations of the sound sources, as derived from subsystem 13, and (3) memory 15 that stores the rendering positions of the sound sources as determined, Inter alia, by block 21. Because the office action fails to indicate where Courneau et al discloses all the foregoing structures of the rendering-position determining means, the rejection of claim 12 is incorrect (page 15, last paragraph).

9) While Courneau et al Indicates headphones are employed, there is nothing to indicate the headphones enable the user thereof to hear real-world sounds. In fact, the inference is that the user cannot hear real-world sounds because a pilot who is using the apparatus Courneau et al discloses cannot directly hear his copilot who is sitting behind him, but hears the voice of the copilot through spatialization module 1 and headphones.

10) Claim 12 indicates the user is assisted in distinguishing the sound emanating from one or more of the sound sources from the real-world sounds by use of distinctive-presentation means. The distinctive-presentation means limitation under 35 USC 112, paragraph 6 corresponds to sound setter 84,

Figure 10, that selectively applies, under user, control, a distinctive presentation effect, in the form of a sound effect to at least one of the sound sources (page 17, last paragraph).

11) There is no disclosure of device 12 applying a distinctive presentation effect to the synthesized sounds that Courneau et al derives, wherein the distinctive presentation effect assists the subject who is wearing the headphones in distinguishing sounds from the synthesized sound sources from real-world sounds (page 19, last paragraph).

12) The illogical rationale is that because Courneau et al does not teach a particular feature, Coumeau et al inherently teaches that feature. This is similar to saying that because Einstein's theory of special relativity was not taught prior to Einstein setting forth the theory, the theory must have been known. Such logic is beyond the pale.

Examiner respectfully disagrees.

As to 1), it is incorrect to assume, as the Appellant does, that Courneau is primarily concerned with providing synthesized sounds to the headphones of person in a very noisy environment. While Corneau does teach the synthesized sounds being provided in a fighter aircraft, nothing in the passages quoted by Appellant even suggests that the level of noise in the environment is taken into account in order to synthesize sounds. Further, col. 2, lines 3-12 clearly states that the invention is not limited to combat aircraft, but that it can implemented in other types of vehicles, as well as in fixed installations.

As to 2), Appellant does not define in the specification the meaning of the phrase "real-world sounds." One of ordinary skill in the art would readily understand a real world sound to be a sound that occurs in the real world. Therefore, synthesized sounds, such as sounds heard through stereophonic headphones, are real world sounds. Even if one were to assume that real world sounds were not the same as synthesized sounds, nothing in Corneau would prevent a user from hearing non-synthesized sounds. Therefore, Corneau inherently teaches that a user is able to hear real world sounds, as one would, for example, be able to hear sounds while wearing headphones. Further, Appellant's statements create confusion, since it is unclear to Examiner whether a sound from a stereo or an alarm, both of which are electronically synthesized, would be classified as real world or not.

As to 3), contrary to Appellant's arguments, Examiner believes that Corneau clearly teaches applying a distinctive presentation effect to item-related sounds emanating from a synthesized sound source. Examiner reads spatializing as the application of the distinctive presentation effect. As Appellant states, personalization is associated with the hearing characteristics of the ears of the subject who is wearing the headphones. Further, other information concerning the characteristics of the sources to be spatialized are taken in to account, such as said sources' elevation, relative bearing and distance from the pilot (column 3, lines 35-41). Personalization of he headphones is done "under user control" because said user controls the personalization of the headphones to obtain the most efficient possible localization of a virtual sound source for each user (column 1, lines 35-52). Therefore, Corneau clearly teaches selectively applying, under user control, a distinctive presentation effect to item-related sounds emanating from a synthesized sound source.

As to 4), as stated above, personalization enables a user to obtain the most efficient possible localization of a virtual sound source. In addition, spatialization takes in to account personalization, as well as a sources' elevation, relative bearing and distance from a user. All these sources characteristics, in combination with personalization, make spatialization unique for every sound source. One of ordinary skill in the art would readily understand the uniqueness of the characteristic of the spatialized sound to be effects that are applied to item-related sounds emanating from a synthesized sound source.

As to 5), Courneau teaches a ratio of acoustical pressure that is computed as a function of a frequency being measured. Then pairs of frequency responses form a database of transfer-functions (column 5, lines 36-46). The transfer functions are subjected a spatial interpolation and then a temporal interpolation and the resultant values are convoluted with the signal to be spatialized (column 4, lines 45-58). One of ordinary would immediately recognize then that a frequency shift is performed in order to spatialize a signal.

As to 6), as stated by Appellant, a pilot is able to hear threats and warnings. Examiner also notes that the relative bearing and distance from the pilot is taken into account when spatializing a sound (column 3, lines 35-41). Examiner reads the threats and warnings that Corneau teaches as related to the plane where the pilot is located. Corneau further teaches a pilot with a stereophonic helmet that restitutes

(e.g., reconstructs) radiophonic communications as well as various alarms and on-board communications (column 1, lines 9-15). In other words, the threats and warnings are related to the plane, which further has communications that are on-board (e.g., in the pilots cabin). One of ordinary skill in the art would immediately recognize that the reason for taking the relative bearing and distance from the pilot into account when spatializing a sound is that an alarm that is close to pilot (e.g., within a pilot's hearing range) will need be spatialized differently than an alarm farther away. Otherwise an alarm that is readily heard by the pilot without the headphones that is further spatialized loudly through the headphones could cause the pilot hearing damage.

As to 7), the recitation of claim 1 that Appellant seems to refer to reads "a user is able to hear sounds from an environment where the user is located." Appellant seems to state that Courneau's headphones are able to totally cut off a user from hearing sounds in the environment where the user is located. As stated above, given that Courneau does not disclose that a user's hearing is meant to be totally cut off from sounds not originating from the headphones, it is improper to read this into Courneau's teachings. Further, Appellant's assertions seem to ignore that whether a user can hear sounds not reproduced through a headphone depends on the ability of the user to be able to hear said sounds not reproduced through the headphone, and further, the nature of the sound involved. In other words, if the sound is loud enough, and the user's ability to hear is good enough, a user will be able to hear sounds not reproduced through the headphone each and every time. At best, Appellant may argue that sounds from the environment can be reduced, sometimes greatly, but not be reduced so much that a user is not able to hear anything. Therefore, one of ordinary skill would immediately understand that Courneau inherently teaches "a user is able to hear sounds from an environment where the user is located."

As to 8), as stated above, Courneau teaches that the location, height, and bearing of a sound source to a user relative is needed to spatialize a sound so that it seems as if the sound is coming from the location where it originates (column 3, lines 35-41). One of ordinary skill in the art would readily recognize that in order to accomplish this, a computer would need memory to store the location of the sound source, this location also serving as the source's identity. This is means (1). Further, hardware and software would be needed to take into account the user's location and the sources locations. This is

means (2). Finally, the hardware and software would need to compute where the source sounds would be spatialized into on the headphones, and said value would need to be output to a memory. This is means (3). Lastly, Appellant is incorrect in stating that the means are only indicated in the pages and lines quoted by Appellant. Appellant's specification states that the above quotations are simply to "facilitate a clear description of the apparatus; memory organizations and data structures different to those described above are, of course, possible" (page 58, line 30 to page 59, line 2).

As to 9), Appellant again assumes that the copilot would be heard through the spatialization module 1 and headphones because the pilot could not hear the copilot's actual voice. This is an incorrect assumption and Courneau does not teach this. Even if one were to assume that the pilot's cabin was too noisy to hear a human voice without any aid, as stated above in reference to 1), this is a side issue to Courneau's teachings. Noise levels play no part in what Courneau discloses.

As to 10), Examiner reads applying a distinctive presentation effect to a sound as spatializing a sound source, which makes a synthesized sound seems as if coming from the sound source's original location.

As to 11), as Appellant states, all that is needed to meet these limitations of claim 21 is a device that assists (e.g., not one that causes, but merely assists) the subject who is wearing the headphones in distinguishing real-world sounds from the synthesized sound sources. Courneau teaches that on average a user can distinguish four sound sources, and that therefore Courneau's system would spatialize at most four sound sources (column 3, lines 23-31). One of ordinary skill in the art would readily recognize that if a user then heard five sound sources, at least one of those sound sources would not be spatialized, and thus not synthesized. Thereby, Corneau's teaches that the subject who is wearing the headphones is assisted in distinguishing the fifth sound source as a real-world sound from the synthesized sound sources.

As to 12), Appellant does not understand Examiner's position. If Corneau does not teach a particular feature, Corneau may inherently teach ***a different*** feature. In the instant case, because Corneau teaches headphones that do not necessarily block a user ability to hear sounds not synthesized by the headphones, and a user would be able to hear sounds not synthesized by headphones if the

user's hearing is good enough and the sounds are loud enough, one of ordinary skill in the art would naturally understand that sounds from a user's environment would inherently be able to be heard by a wearer of Corneau's headphones. Absent evidence to the contrary, the rejection stands. However, even if there were evidence that a headphone existed that totally prevented any user from hearing any sounds not synthesized by the headphone, it would be at least be obvious that a headphone would enable a user to still hear sounds from a user's environment. If Appellant can provide proof of the existence of headphones canceling all of a user's environment's sounds, Examiner will retract the 102 rejections, and then provide a more proper 103 rejection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jordany Nunez
7/10/2007

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